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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No. 653

THE UNITED STATES OF AMERICA, APPELLANT

vs.

JOHN G. DARBY, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

FILED FEBRUARY 1, 1933

(37350)

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1 [Caption omitted.]

2, 3 In United States District Court, District of Maryland

UNITED STATES OF AMERICA
vs.
JOHN G. DARBY

Indictment

Filed Oct. 20, 1932

The grand jurors of the United States of America in and for the District of Maryland, inquiring for the body of said district, do on their oath present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction and management which he possessed, heretofore, to wit, on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there
4 designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

Bessie D. Darby ren
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false,

contrary to the form of the statute in such case made and provided; and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

5 Second Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby, was the assistant cashier of the Montgomery County National Bank, of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

6 Bessie D. Darby ren
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

7 Third Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 27th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, volume No. —, at Register No. 53043, a certain entry, which said entry was as follows:

B. D. Darby, ren

8 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 23, 1931, in the sum of $3,151.20, due on March 23, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

9 Fourth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the

United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 27th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53043, a certain entry, which said entry was as follows:

B. D. Darby, ren

10 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 23, 1931, in the sum of $3,151.20, due on March 23, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

11 Fifth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official

relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53078, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which
12 J. G. Darby appeared as maker, in the sum of $1,396.83, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

13 Sixth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make

and cause to procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53079, a certain entry, which said entry was as follows:

B. D. Darby ren

14 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, in the sum of $1,396.83, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

15 Seventh Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 24th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount, Register, Volume No. —, at Register No. 53603, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.

16 Darby appeared as maker, in the sum of $1,648.20, due on March 24, 1931, which had been accepted by the said national

bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

17 Eighth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 24th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53603, a certain entry, which said entry was as follows:

B. D. Darby ren

18 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, in the sum of $1,648.20, due on March 24, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby, then well knew, the said note was not executed by the said B. D. Darby, and

the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

19 Ninth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 26th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53623, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated February 24, 1931, in the sum of
20 $979.87 due on March 26, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby, then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

21 Tenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 26th day of February, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53623, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

22 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated February 24, 1931, in the sum of $979.87 due on March 26, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

23 Eleventh Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the

offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54422, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
24 Darby appeared as maker, dated March 15, 1931, in the sum of $3,160.72, due on April 15, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

25 Twelfth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the

said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54422, a certain entry, which said entry was as follows:

B. D. Darby ren

26 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 15, 1931, in the sum of $3,160.72, due on April 15, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

27 Thirteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then

and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank, in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54423, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
28 Darby appeared as maker, dated March 16, 1931, in the sum of $585.80, due on May 16, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or indorser, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

29 Fourteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 1st day of April, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the Comptroller of the Currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register,

Volume No. —, at Register No. 54423, a certain entry, which said entry was as follows:

B. D. Darby ren

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G.
30 Darby appeared as maker, dated March 16, 1931, in the sum of $585.80, due on May 16, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was signed by the said B. D. Darby as maker, or endorser, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said B. D. Darby, and the said signature purporting to be the signature of the said B. D. Darby on the said note was a forgery; and the grand jurors further find that the said entry aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

31 Fifteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 18th day of March, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54075, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 17, 1931, in the sum of
32 $1,076.66, due on May 17, 1931, which had then been accepted by the said national bank for discount, and which was then

in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby, then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

U. S. C. A., title 12, sec. 592.

33 Sixteenth Count

And the grand jurors aforesaid, upon their oath aforesaid, do further present that during the time of the commission of the offense hereinafter set forth, John G. Darby was the assistant cashier of the Montgomery County National Bank of Rockville, Maryland, a body corporate, which said national bank had theretofore been organized and was then and there existing under the laws of the United States of America and doing business at Rockville, in the said State and district, and was then and there a member of the Federal Reserve Bank of Richmond, Virginia, and a member bank within the meaning of the Federal reserve act (U. S. C. A., title 12, section 221); and the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed therein, heretofore, to wit, on the 18th day of March, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to deceive the officers of the said national bank, and the comptroller of the currency, and the agents and examiners lawfully appointed in accordance with the provisions of the Federal reserve act to examine the affairs of said member bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 54075, a certain entry, which said entry was as follows:

Bessie D. Darby,
Rockville, Md.

34 which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated March 17, 1931, in the sum of $1,076.66, due on May 17, 1931, which had been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note was not executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; and the grand jurors further find

that the said entry as aforesaid was unjustified, unwarranted, and false, contrary to the form of the statute in such case made and provided, and against the peace, Government, and dignity of the United States of America.

SIMON E. SOBELOFF,
United States Attorney.

U. S. C. A., title 12, sec. 592.

The aforegoing indictment is thus endorsed:

"A true bill.

"E. STANLEY GARY, jr., *Foreman.*"

35 In United States District Court

[Title omitted.]

Demurrer to indictment

Filed Nov. 28, 1932

Now comes the defendant, John G. Darby, by his attorney, and says that the indictment against him in the above-entitled cause is bad substance as to each and every count thereof.

LUCIEN H. MERCIER,
Attorney for Defendant.

NOTE.—Among the points to be argued are:

(a) Each and every count admits that the paper which is alleged to form the basis of the false entry was actually discounted by, and was actually in the possession of the bank—

(1) There can be no false entry where the entry as entered represents an actual transaction of the bank.

(2) It can make no difference whether the defendant knew the note to be forged or not, if the note entered into an actual transaction of the bank.

(3) The entry merely represents that such a transaction was entered into—and does not declare or represent that the paper forming the basis of the entry was good.

(b) The bank having actually discounted the paper, as the indictment charges, it became the duty of the defendant to record the transaction—it would have constituted a false entry not to so record it.

LUCIEN H. MERCIER,
Attorney for Defendant.

36 In United States District Court for the District of Maryland

Criminal #16666

UNITED STATES OF AMERICA

vs.

JOHN G. DARBY

Opinion

Filed Dec. 7, 1932

COLEMAN, District Judge:

The single question before the court is whether the following allegations as set forth in the indictment of the defendant, John G. Darby, assistant cashier of the Montgomery County National Bank of Rockville, Maryland, are sufficient to meet the requirements of the statute defining the crime of false entry by officers, employees, etc., of national banks. (12 U. S. C. A., sec. 592.) There are sixteen counts in the indictment, all of which charge substantially the same offense, but with respect to different promissory notes. Therefore, suffice it to quote the following from the first count: "* * * the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, and by virtue of the power of control, direction, and management which he possessed, heretofore, to wit, on the 28th day of January, 1931, at Rockville, feloniously, knowingly, and willfully, and with intent then and there to injure and defraud the said national bank, did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

"Bessie D. Darby, ren
"Rockville, Md.

"which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and
37 the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery."

The defendant has demurred to the indictment. It must be assumed from the allegations of the indictment as above set forth,

and from the absence of anything to the contrary appearing in the indictment, that the promissory notes in question came properly into the possession of the bank through discount transactions made in the regular course of business, and that the defendant, acting in his capacity as assistant cashier, listed the notes as part of the bank's assets. The Government claims that such a listing made with knowledge that one of the signatures on the note was a forgery, amounted to a false entry within the meaning of the statute, the pertinent provisions of which are as follows: "Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in sections 221 to 225 of this title, who embezzles, abstracts, or willfully misapplies any of the moneys, funds, or creditors of such Federal reserve bank or member bank, or who without authority from the directors of such Federal reserve bank or member bank, issues or puts in circulation any of the notes of such Federal reserve bank or member bank, or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injury or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member banks, or the Federal Reserve Board; and every receiver of a national banking association who, with like intent to defraud or injure, embezzles, abstracts, purloins, or willfully misapplies any of the moneys, funds, or assets of his trust, and every person who, with like intent, aids or abets any officer, director, agent, employee, or receiver in any violation of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court." (12 U. S. C. A., sec. 592.)

38 It will be seen that the statute covers numerous separate offenses, namely, embezzlement, abstraction, or misapplication of funds; unauthorized issuance of certificates of deposit or other documents, and lastly, making false entries. We see no escape from the conclusion that defendant's demurrer must be sustained on the authority of Coffin vs. United States, 156 U. S. 532; 162 U. S. 664; Agnew vs. United States, 165 U. S. 36, and Cooper vs. United States, 13 F. (2d) 16, the latter a decision of the Circuit Court of Appeals for this circuit, because the principle laid down in those cases is believed to be directly applicable to the facts in the present case. While, from aught that appears from the allegations of the indictment, what defendant did amounted to misapplication of funds, he

is not charged with this, but solely with the making of false entries which is a separate, concrete offense, and, if we properly interpret the aforegoing decisions, is not committed where, as here, the transactions of which he made entries actually occurred and were entered exactly as they occurred.

In the Coffin case, supra, the Supreme Court reversed a conviction for false entry, finding that the lower court had erred in charging the jury in effect that ". . . if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted a 'false entry.'" 156 U. S. 342, 463. The facts were that the defendant, acting as an officer of a national bank, received the bill of exchange of a depositor and credited it with that amount, allowing it to draw checks against such credit. Thereupon, although he knew the bill to be worthless and made no effort to collect it, he entered it upon the books of the bank as an asset. Mr. Justice White, in the course of his opinion, said, page 463: "Whilst we consider the charges asked were in some respects unsound, yet the exception reserved to the charge actually given by the court was well taken, because therein the questions of misapplication and of false entries are interblended in such a way that it is difficult to understand exactly what was intended. We think the language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted "a false entry;" in other words, that an entry would be false, though
39 it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred."

To the same effect, upon similar state of facts, are Agnew *vs.* United States and Cooper *vs.* United States, supra. Nevertheless, the Government attempts to distinguish these cases from the present case on the ground that no forgery existed in those cases, but merely known insolvency of the persons whose true signatures appeared on the paper. While, to be sure, this is a factual difference, we do not believe that it permits of a different result when the language and intent of the statute are correctly applied. Such a refinement in the definition of the term "false entry" is not permissible. The word "false" denotes some thing that is not genuine or real; artificial; counterfeit. An "entry" is defined as the "act of making or entering a record; a setting down in writing of particulars, as of a transaction; as an entry of a sale; also that which is entered; an item." (Webster's International Dictionary.) It is argued that when an entry is made of the note of an insolvent, every thing represented

as true is true; that the bank possessed such a note which is, in fact, signed by the person whose signature appears on the note; that whereas, on the other hand, when an entry is made of a forged note, the representation is untrue; that the bank does not possess a note signed by the person whose name appears thereon. But the weakness of this narrow distinction is that the bank's employees is not charged with representation beyond existence of the actual document which he copies. As has already been pointed out, the act seeks to punish offenses of various and distinct kinds, of which the making of false entries is merely one. We do not believe that Congress intended this last of a series of offenses to be so broad as to include the others. The crime of "false entry" must have been treated as a separate crime, through punishment for which at least one main purpose was to reach bank officials or employees guilty of padding their accounts with the purpose of deceiving their fellow officers or employees, and bank examiners, by making entries of transactions which in fact never occurred—acts which in themselves and without more, would not otherwise have been criminal.

The records of the bank are not intended to furnish the history or the origin of the paper actually passing through the bank, whether received in good or bad faith, whether valuable or worthless for whatever reason. In the Coffin case, supra, the Supreme Court said "that the truthful entry of a fraudulent transaction" does not constitute a false entry within the meaning the statute. Thus, unless we can say that in the present case there was in fact no transaction to which the bank was a party, there can be no sound distinction on principle between the truthful entry of a transaction, fraudulent because the evidence of indebtedness was accepted when known to be worthless, and one fraudulent, because the evidence of indebtedness was known to contain a forged signature. Clearly, there was a "transaction" in the present case because, as alleged in the indictment, the note was accepted and discounted by the bank and contained in addition to the forged signature, the name of the defendant, a valid signature from aught that appears. See also Dow vs. United States, 82 Fed. 904; United States vs. Young, 128 Fed. 111; Twining vs. United States, 141 Fed. 41.

Whether for one reason or another, as a result of the conclusion here reached, it may not be possible to bring the alleged unlawful conduct of the defendant within the language of one or more of the other provisions of the statute, is a matter with which we are not here concerned. The sole problem presented is one of construction. It is not the function of the court to strain the language of a statute unless there is clear justification for so doing, regardless of the practical arguments that may be advanced therefor.

Accordingly, the demurrer will be sustained.

WILLIAM C. COLEMAN.

41 In United States District Court for the District of Maryland

Criminal No. 16666

UNITED STATES OF AMERICA

vs.

JOHN G. DARBY

Order sustaining demurrer and quashing indictment

Filed Dec. 7, 1932

Upon consideration of the demurrer to the indictment in this cause, and upon consideration of the arguments thereon, it is, by the court, this 7th day of December, A. D. 1932.

Ordered, that the demurrer be, and the same is, hereby sustained; and

It is further ordered, that the indictment heretofore returned herein against the above-named defendant be, and the same is, hereby quashed.

WILLIAM C. COLEMAN,
United States District Judge.

42 In United States District Court

[Title omitted.]

Certificate of court

Filed Dec. 8, 1932

I hereby certify that the decision in the above case is based on my construction of U. S. C. A., title 12, section 592.

WILLIAM C. COLEMAN,
United States District Judge.

DECEMBER 5TH, 1932.

43 In United States District Court

[Title omitted.]

Petition for appeal and order allowing same

Filed Dec. 31, 1932

Comes now the United States of America, plaintiff in the above-entitled cause, by Simon E. Sobeloff, United States Attorney in and for the District of Maryland, and conceiving itself aggrieved by the

order entered in this cause on December 7, 1932, sustaining a demurrer to the indictment, prays that an appeal may be allowed from said order to the Supreme Court of the United States, and in connection with this petition the United States presents herewith its assignment of errors and statement of jurisdiction.

Dated December 31st, 1932.

UNITED STATES OF AMERICA,
By its attorney,
SIMON E. SOBELOFF,
United States Attorney.

Appeal allowed this 31st day of December, 1932.

WILLIAM C. COLEMAN,
United States District Judge.

43a [Citation in usual form showing service on Lucien H. Mercier omitted in printing.]

44 In United States District Court

[Title omitted.]

Assignment of errors

Filed Dec. 31, 1932

Comes now the United States of America, by Simon E. Sobeloff, United States attorney in and for the District of Maryland, and in connection with its appeal makes the following assignment of errors:

1. The District Court erred in sustaining the demurrer to the indictment.

2. The District Court erred in holding that the transactions covered by this indictment were entered exactly as they occurred.

3. The District Court erred in holding that an entry in the discount register of the name of a comaker or endorser which was forged on a note was not a false entry within the meaning of section 5209 of the Revised Statutes as amended.

Dated December 31, 1932.

THE UNITED STATES OF AMERICA,
By its attorney,
SIMON E. SOBELOFF,
United States Attorney.

[45–52 omitted.]

53 In United States District Court

[Title omitted.]

Præcipe for transcript of record.

Filed Jan. 4, 1933

Mr. CLERK:

In making up the record for the appeal to the United States Supreme Court in the above case, please include the following documents:

Indictment.
Demurrer.
Opinion of court.
Order of court sustaining demurrer.
Certificate of court.
Petition for appeal.
Order of court allowing same.
Assignment of errors.
Statement of jurisdiction.
Notice and proof of service of papers.
This præcipe.
Memorandum of clerk.
Order to transmit record.
Copy of docket entries.
Clerk's certificate.
Dated December 31, 1932.

SIMON E. SOBELOFF,
United States Attorney.

Service of copy admitted this 3rd day of January, 1933.

LUCIEN H. MERCIER,
Counsel for Appellee.

The appellee will not require additional portions of the record to be inserted in the transcript.

LUCIEN H. MERCIER,
Counsel for Appellee.

54 In United States District Court

[Title omitted.]

Docket entries

1932

Oct. 20. Indictment for Vio. National Banking Law, U. S. C. A., title 12, section 592, filed.
" " Bench warrant issued. (Not found in Dist. Md., Oct. 21, 1932.)
" 27. Transcript of proceedings before U. S. Comr., District of Columbia, filed.

Nov. 28. Demurrer, filed. (Service admitted.)
Dec. 7. Opinion of court filed.
" 8. Certificate of Judge in re: Decision herein, filed.
" 7. Order of court sustaining demurrer and quashing indictment, filed.
" 31. Petition of United States of America and order of court allowing appeal, filed.
" " Assignment of errors, filed.
" " Statement of jurisdiction with letter of notice, filed.
1933
Jan. 4. Instructions to clerk for making up record on appeal, filed.
" " Citation issued retble within forty days. (Service acknowledged 9 Jany, 1933.)
" 14. Statement in opposition to jurisdiction filed.
" " Motion to dismiss or affirm appeal, filed.

55 In United States District Court

Order to transmit record

And, thereupon, it is ordered by the court here, that a transcript of the record and proceedings of the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same is transmitted accordingly.

Teste:

ARTHUR L. SPAMER, *Clerk.*

[Clerk's certificate to foregoing transcript omitted in printing.]

56 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of entire record for printing

Filed Feb. 10, 1933

STATEMENT

Pursuant to rule 13 of this court, appellant specifies the following as the points upon which it intends to rely in the above-entitled cause:

1. An entry in the books of a bank which, in a material part, falsely and untruly represents an actual and existing transaction is a false entry.

2. When such entry is knowingly and purposely made, with intent to deceive or defraud, it constitutes a false entry within the meaning of section 5209, Revised Statutes, as amended.

3. When the entry of the details of a note in the discount register of a bank includes the transcription into that register of a
57 forged signature of a comaker or endorser, and the officer making or causing such entry to be made knows that such signature is forged, such officer is guilty of the offense denounced by the statute.

The entire record as filed should be printed.

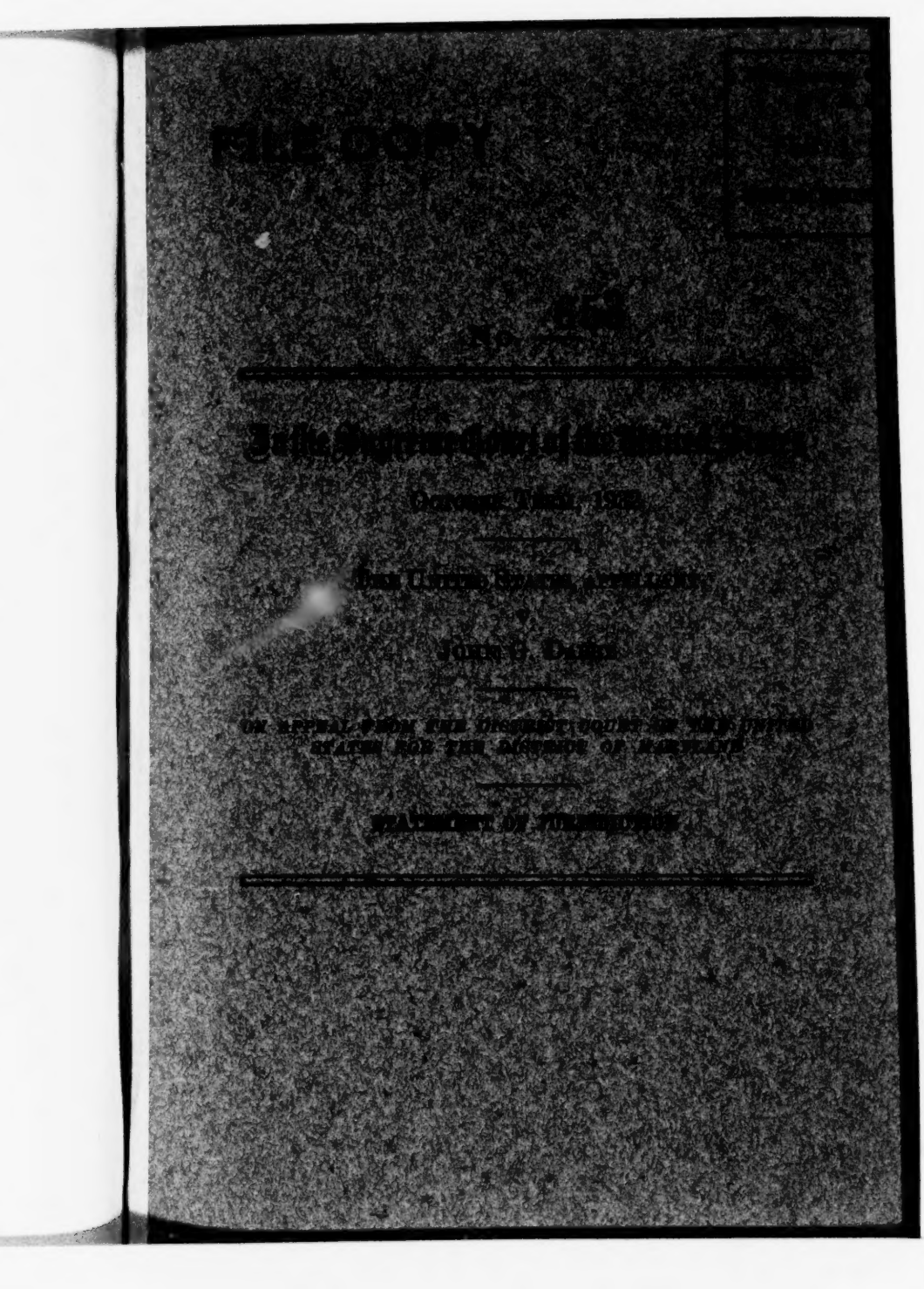
THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1933.

[File endorsement omitted.]

[Indorsement on cover:] Enter, Attorney General. File No. 37350. Maryland, D. C. U. S. Term No. 653. The United States of America, appellant, vs. John G. Darby. Filed February 1, 1933. File No. 37350.

U. S. GOVERNMENT PRINTING OFFICE: 1933



In the Supreme Court of the United States

OCTOBER TERM, 1932

No. ——

THE UNITED STATES, APPELLANT

v.

JOHN G. DARBY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above-entitled cause:

A

STATUTES

The statutory jurisdiction of this Court to review by direct appeal the order here complained of is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), otherwise

known as the Criminal Appeals Act, and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925.

B

DATES OF ORDER AND APPLICATION FOR APPEAL

The order of the District Court was entered December 7, 1932. An application for appeal was filed 31st December, 1932, and allowed 31st December, 1932.

C

NATURE OF THE CASE

This indictment consists of sixteen counts, charging eight offenses of making false entries in the books of the Montgomery County National Bank of Rockville, Maryland, in violation of Section 5209, Revised Statutes, as amended. (U. S. C., Title 12, Sec. 592.) The odd-numbered counts charge that the entries were made with intent to injure and defraud the bank. The even-numbered counts charge an intent to deceive the officers of the bank and the Comptroller of the Currency. The false entries charged consisted of entering in the Discount Register the name of Mrs. Bessie D. Darby as comaker or endorser, when the defendant knew that the signature of her name on the notes in question was a forgery. Defendant demurred, and the Court sustained the demurrer on the ground that the offense charged in each count was

not committed "where, as here, the transaction entered, actually occurred and was entered exactly as it occurred." The District Court has certified that its decision in this case is based on its construction of the statute cited above.

D

CASES SUSTAINING JURISDICTION

The following decisions are believed to sustain the jurisdiction of this Court:

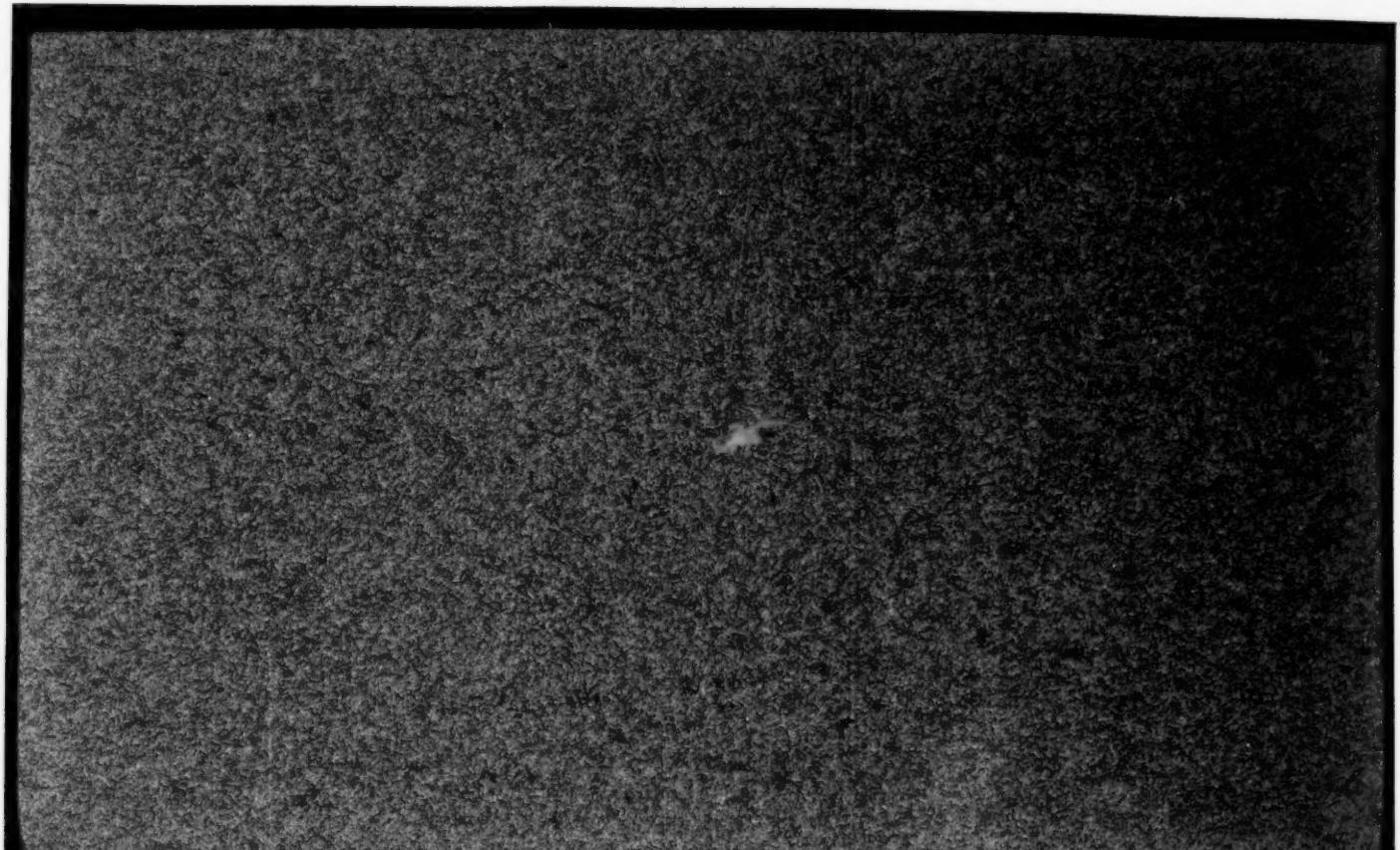
United States v. *Katz,* 271 U. S. 354.
United States v. *Fruit Growers Express Co.,* 279 U. S. 363.
United States v. *Farrar,* 281 U. S. 624.
United States v. *Sprague,* 282 U. S. 716.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

DECEMBER, 1932.

U. S. GOVERNMENT PRINTING OFFICE: 1933



In the Supreme Court of the United States

OCTOBER TERM, 1932

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

JOHN G. DARBY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO MOTION BY APPELLEE TO DISMISS OR AFFIRM

OPINION BELOW

The opinion of the District Court appears at R. 36–40.[1] It has not been reported.

GROUNDS OF APPELLEE'S MOTION

The principal ground alleged in the motion to dismiss or affirm (R. 51–52) is that this Court is without jurisdiction of the appeal in this case under

[1] References herein to the record refer to the pages of the typewritten record certified by the Clerk of the District Court.

the Criminal Appeals Act, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), because the District Court in sustaining the demurrer to the indictment based its decision upon its construction of the indictment rather than upon its construction of the statute.

ARGUMENT

WHERE THE DISTRICT COURT HOLDS, AS IN THIS CASE, THAT THE ACTS CHARGED IN THE INDICTMENT ARE NOT WITHIN THE CONDEMNATION OF THE STATUTE, A CONSTRUCTION OF THE STATUTE IS NECESSARILY INVOLVED.

The foregoing proposition is fully sustained by *United States* v. *Birdsall*, 233 U. S. 223, 230, and *United States* v. *Patten*, 226 U. S. 525, 535. In the latter case, this Court said:

> The court could not have decided, as it did, that the acts charged are not within the condemnation of the statute without first ascertaining what it does condemn, which, of course, involved its construction.

The sole subject of discussion in the opinion of the court below was whether the acts charged in this indictment are within the condemnation of the statute.[2] It is sufficient for the purpose of this brief

[2] The opinion quoted in the Statement in Opposition to Jurisdiction (R. 49), filed simultaneously with the Motion to Dismiss or Affirm, is a memorandum opinion which does not appear in the record certified by the Clerk of the District Court.

to quote the court's opening and closing words (R. 36):

> The single question before the court is whether the following allegations as set forth in the indictment of the defendant, John G. Darby, Assistant Cashier of the Montgomery County National Bank of Rockville, Maryland, are sufficient to meet the requirements of the statute defining the crime of false entry by officers, employees, etc., of national banks.
>
> * * * * *
>
> Whether for one reason or another, as a result of the conclusion here reached, it may not be possible to bring the alleged unlawful conduct of the defendant within the language of one or more of the other provisions of the statute, is a matter with which we are not here concerned. The sole problem presented is one of construction. It is not the function of the court to strain the language of a statute unless there is clear justification for so doing, regardless of the practical arguments that may be advanced therefor.
>
> Accordingly, the demurrer will be sustained.

In other words, the sole question determined was whether the entry in the discount register of the details of a note, including the transcription into that register of an alleged forged signature of a co-maker or endorser, was within the condemnation

of the statute forbidding the making of false entries.

We know of no other case and none is cited by the respondent in which any court has construed Section 5209 R. S. as amended as having no application to the deliberate entry upon the books of a national bank of the name of a person as the maker or endorser of a note with knowledge that the note was not signed or endorsed by the person named. We contend that the statute when properly construed prohibits such an entry and that the court below misconstrued the statute in holding otherwise.

CONCLUSION

The motion to dismiss or affirm should be denied.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

JANUARY, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 653

UNITED STATES OF AMERICA, APPELLANT

v.

JOHN G. DARBY

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND

OPINION BELOW

The opinion of the District Court (R. 16–19) has not been officially reported.

JURISDICTION

The order of the District Court sustaining the demurrer to and quashing the indictment was entered December 7, 1932. (R. 20.) Application for direct appeal to this Court was filed and allowed on December 31, 1932. (R. 20–21.) The jurisdiction of this Court rests upon the Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C., Title 18, Sec. 682), known as the Criminal Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. C., Title 28, Sec. 345).

QUESTION PRESENTED

Whether, under Section 5209 of the Revised Statutes, as amended, an officer of a member bank in the Federal Reserve System is guilty of making a false entry in the discount register of such bank when, with intent to deceive or defraud, he transcribes, or causes to be transcribed, in that register the name of a person, as comaker or endorser of a promissory note accepted by the bank for discount, with knowledge that such person had not signed or endorsed said note and that such person's purported signature thereon was a forgery.

STATUTE INVOLVED

Section 5209 of the Revised Statutes, as amended by the Act of September 26, 1918, c. 177, Sec. 7, 40 Stat. 972 (U. S. C., Title 12, Sec. 592) provides in part as follows:

> SEC. 5209. Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank * * * who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of

> such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

On October 20, 1932, the appellee, John G. Darby, was indicted in the United States District Court for the District of Maryland upon sixteen counts under Section 5209 of the Revised Statutes, as amended, for making eight alleged false entries in the books of the Montgomery County National Bank of Rockville, Maryland. The odd-numbered counts charged the particular entry to have been made with intent to injure and defraud the bank, and the even-numbered counts charged the particular entry to have been made with intent to deceive the officers of the bank and the Comptroller of the Currency. In each instance the false entry charged consisted of the entry by appellee, as assistant cashier of the bank, in the bank's discount register of the name of "Bessie D. Darby," or "B. D. Darby," as comaker or endorser of a described promissory note, on which J. G. Darby appeared as maker, and which had been accepted by the bank for discount, whereas, it was charged, as the appellee well knew, the purported signature of "Bessie

D. Darby" or "B. D. Darby" on such note was a forgery.[1] (R. 1–15.)

The defendant demurred to the indictment (R. 15), and the demurrer was sustained by the District Court (R. 20) on the ground that the offense of making false entries is not committed "where, as here, the transactions of which he [appellee] made entries actually occurred and were entered exactly as they occurred" (R. 15–19). The District Court

---

[1] The first count, which is typical of all the others, charged as follows (R. 1):

"* * * the said John G. Darby, by virtue of his official relation as such assistant cashier of the said national bank, * * * on the 26th day of January, 1931, at Rockville, feloniously, knowingly, and wilfully, and with intent then and there to injure and defraud the said national bank did make and cause and procure to be made in a certain book then and there belonging to and in use by the said national bank in transacting its said banking business, and then and there designated and known as the Discount Register, Volume No. —, at Register No. 53006, a certain entry, which said entry was as follows:

"Bessie D. Darby ren
"Rockville, Md.

"which said entry aforesaid, made in said book, was then and there false in that it purported to show that a note on which J. G. Darby appeared as maker, dated January 20, 1931, in the sum of $419.15 due on March 20, 1931, which had then been accepted by the said national bank for discount, and which was then in the possession of the said national bank, was also signed by the said Bessie D. Darby, of Rockville, Maryland, as maker, whereas in fact, as he, the said John G. Darby then well knew, the said note had not been executed by the said Bessie D. Darby as maker as aforesaid, and the said signature purporting to be the signature of the said Bessie D. Darby on the said note was a forgery; * * *."

certified that its decision was based on its construction of the statute.[2] (R. 20.)

SPECIFICATION OF ERRORS

1. The District Court erred in sustaining the demurrer to and quashing the indictment.

2. The District Court erred in holding that the transactions set forth in the indictment were entered by appellee in the bank's discount register exactly as they occurred.

3. The District Court erred in holding that the transcription into a bank's discount register of the forged signature of the comaker or endorser of a promissory note, when done with intent to deceive or defraud and with knowledge of the forgery, was not a "false entry" under Section 5209 of the Revised Statutes, as amended.

SUMMARY OF ARGUMENT

An entry in the books of a bank which is intentionally made to represent what is not true or does not exist, or which falsely represents an actual

[2] The appellee has filed a statement opposing jurisdiction and a motion to dismiss or affirm based upon the contention that the instant case does not involve the construction of the statute in question. Although the error of this contention is, we think, sufficiently demonstrated by the memorandum of the United States in opposition to appellee's motion to dismiss or affirm, we wish to refer the Court in this connection to *United States* v. *Corbett*, 215 U. S. 233, 236–237. The instant case does not turn on the meaning or sufficiency of the indictment, as argued by appellee, but solely upon the question whether the act charged in the indictment falls within the condemnation of the statute.

transaction is, when made with intent to deceive or defraud, a false entry under Section 5209, R. S., as amended. The signature of a comaker or endorser of a promissory note which has been accepted by the bank is a material part of the note. Accordingly, the transcription into the bank's discount register of the forged signature of the comaker or endorser of a note, when done with intent to deceive or defraud and with knowledge of the forgery, is a false entry within the meaning of the statute.

ARGUMENT

It has been repeatedly held that any entry in the books of a bank which is intentionally made to represent what is not true or does not exist, or which, in a material part, falsely and untruly represents an actual and existing transaction is, when made knowingly and with intent to deceive or defraud, a "false entry," within the meaning of Section 5209 of the Revised Statutes, as amended (p. 2, *supra.*)[3] *Agnew* v. *United States,* 165 U. S. 36, 52–53; *Coffin* v. *United States,* 162 U. S. 664, 683–685; *Morse* v. *United States,* 174 Fed. 539, 548, 551–552, 555 (C. C. A. 2d), certiorari denied, 215 U. S. 605; *United States* v. *Harper,* 33 Fed. 471, 480 (C. C., S. D. Ohio); *United States* v. *Wilson,* 176 Fed. 806, 809 (C. C., S. D. Fla.);

[3] For the requirements generally of an indictment for making false entries under Section 5209, R. S., see *United States* v. *Britton,* 107 U. S. 655, 662–666; *Cochran* v. *United States,* 157 U. S. 286, 293.

United States v. *Warn*, 295 Fed. 328 (D. Idaho). The signature of a comaker or endorser of a promissory note is, of course, a material part of the note. Accordingly, the transcription into a bank's discount register of the forged signature of the comaker or endorser of a note which has been discounted by the bank falsely and untruly represents the transaction, and when done with intent to deceive or defraud and with knowledge of the forgery, as alleged in the indictment here in question, is a false entry within the meaning of the statute.

In *Agnew* v. *United States*, 165 U. S. 36, *supra*, it was contended that the trial court had erred in giving the following instruction on behalf of the Government (p. 52):

> The crime of making false entries by an officer of a national bank with the intent to defraud, defined in the Revised Statutes of the United States, section 5209, includes any entry on the books of the bank which is *intentionally made to represent what is not true or does not exist*, with the intent either to deceive its officers or to defraud the association. The crime may be committed personally or by direction.
>
> Therefore the entry of a slip upon the books of the bank, if the matter contained in that deposit slip is not true, is a false entry. *If the statement made upon the deposit slip is false, the entry of it in the bank and the books of the bank is false.* (Italics ours.)

It was also contended that the trial court erred in refusing to give the following instruction requested by the defendant (p. 52):

> The making of a false entry is a concrete offence which is not committed where the transaction entered actually took place and is entered exactly as it occurred.
>
> The truthful entry of a transaction charged as fraudulent does not constitute a false entry within the meaning of the statute.

The Court held that the instruction, as given, was correct and in accordance with the rule announced in *Coffin* v. *United States*, 162 U. S. 664, *supra*, and that no error was committed in declining to give the requested instruction.[4] See also *United States* v. *Wilson*, 176 Fed. 806, 808 (C. C., S. D. Fla.), *supra*; *United States* v. *Morse*, 161 Fed. 429, 436 (S. D. N. Y.) aff'd after trial, 174 Fed. 539 (C. C. A. 2d); *United States* v. *Warn*, 295 Fed. 328 (D. Idaho) *supra*.[5]

---

[4] It should be noted that the requested instruction was copied from the language of this Court in the first *Coffin* case (*Coffin* v. *United States*, 156 U. S. 432, 463), upon which language the District Court in the instant case seems chiefly to have predicated its decision. (R. 18.) A refusal to give an instruction substantially like the requested instruction in the *Agnew* case was also upheld in *Billingsley* v. *United States*, 178 Fed. 653, 663 (C. C. A. 8th).

[5] The views of the courts in this group of cases with respect to the question presented in the instant case are clearly indicated by the following statements in the opinions of those courts:

If, as held in the *Agnew* case, the entry of the details of a deposit slip upon the books of a bank is a "false entry" if the matter contained in the deposit slip is not true, clearly the entry in a bank's discount register of the forged signature of the co-maker or endorser of a promissory note is a false entry.

That the entries in the instant case fall well within the limits of the statute is indicated by decisions which hold that the faithful (i. e., *accurate*)

United States v. *Warn*, 295 Fed. 328, 330 (D. Idaho)—

"* * * an entry or report, made by one knowing the facts, of a note or other instrument as real or genuine, which in truth is forged or spurious, or a mere sham, would fall within the denunciation of the statute."

United States v. *Wilson*, 176 Fed. 806, 808 (C. C., S. D. Fla.)—

"* * * if the fact stated in a slip was known to be untrue, it is a false entry, and copying such false entry in the books with intent to deceive would be a violation of the statute."

United States v. *Morse*, 161 Fed. 429, 436 (S. D. N. Y.), affirmed after trial, 174 Fed. 539 (C. C. A. 2d)—

"It may be the truth that there was a note; but, if the note was 'fictitious,' it is not the whole truth to recite or record or enter it as a genuine note. There is a difference between a false record and the record of a falsehood—between a fraudulent entry and the entry of a fraud. The difference is that the latter exposes the falsity or fraud, while the former does not. If this note was fictitious—e. g., forged to the knowledge of the bank, or unenforceable against the maker by agreement of parties—it was no better than a blank piece of paper, and its inclusion in the 'call loans' was as clearly within the statute as were the entries as bank cash of money not on deposit, * * *."

entry of a sham or fictitious transaction is, if made with intent to deceive or defraud, a false entry under Section 5209, R. S. *Coffin* v. *United States,* 162 U. S. 664, *supra; Morse* v. *United States,* 174 Fed. 539 (C. C. A. 2d), certiorari denied, 215 U. S. 605, *supra; Peters* v. *United States,* 94 Fed. 127, 144–146 (C. C. A. 9th), certiorari denied, 176 U. S. 684; *Billingsley* v. *United States,* 178 Fed. 653, 662 (C. C. A. 8th); *United States* v. *Warn,* 295 Fed. 328 (D. Idaho). See *Hayes* v. *United States,* 169 Fed. 101, 103 (C. C. A. 8th); *State* v. *Cassill,* 70 Mont. 433, 439, 445; *People* v. *Helmer,* 13 App. Div. 426, reversed on other grounds, 154 N. Y. 596; *Reg.* v. *Butt,* 15 Cox's C. C. 564. See also *Lewis* v. *United States,* 22 F. (2d) 760 (C. C. A. 8th), affirmed, 279 U. S. 63.

In *Coffin* v. *United States,* 162 U. S. 664, *supra,* certain commercial paper, not *bona fide* or representing any substantial value, was left at the bank, not as a genuine deposit but as a mere "memorandum deposit to serve for the time being only," for the purpose of giving a certain company an apparent credit upon the books of the bank which in fact it did not have. So far as appears the details of this paper were correctly entered upon the bank's books. The defendant was convicted of falsely entering a credit upon the books of the bank based upon the fraudulent paper and his conviction was affirmed by this Court. The Court held that

the trial court correctly charged the jury as follows (pp. 683–684):

> An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, *which represents as an actual transaction, one which does not and did not exist,* or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, *which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute.* If, however, the entry truly represents an actual *bona fide* transaction, then it would not constitute a false entry.
>
> * * * * *
>
> But if the paper was never accepted or discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and *for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank* with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry. (Italics ours.)

In the instant case the transcription into the bank's discount register of the forged name of the comaker or endorser of the particular note in question clearly represented as an actual transaction one which did not exist. Moreover, it appears that each of the notes was actually signed by the ap-

pellee and discounted by the bank. Accordingly, the transcription into the register of the forged signature of the comaker or endorser falsely represented an actual transaction between the appellee and the bank.

In *Morse* v. *United States,* 174 Fed. 539 (C. C. A. 2d), certiorari denied, 215 U. S. 605, *supra,* the defendant, an officer of a bank, had used the bank's money for the purchase of speculative securities. To conceal the real nature of these transactions he caused persons of no financial responsibility and under his control to sign notes to the bank which purported to be secured by the securities so purchased. The transactions were entered upon the books of the bank as loans by employees who were ignorant of their real nature. The actual book entries were, of course, accurate transcriptions from the notes. In sustaining defendant's conviction for making false entries in the books of the bank and in reports to the Comptroller of the Currency, the court said (p. 548):

> The entries in question were false because *they stated the existence of transactions which the jury found never took place.* They were not entries of improvident or fraudulent loans, but entries as loans of transactions that should have been entered as sales to the bank of speculative stocks. There is a distinction between a real, although fraudulent, note, and a fictitious or sham note which represents no real transaction. (Italics ours.)

With respect to the counts charging false entries in reports to the Comptroller, the court further said (pp. 551–552):

> The main contention on this branch of the case is that the alleged false entries are not false, but faithfully describe actual occurrences. The reports to the Comptroller which form the gravamen of these counts are, of course, taken from the books of the bank and do accurately and faithfully state what the books themselves disclose. But the real test of their truth or falsity is whether or not they faithfully represent the original transaction—that they were repeated automatically through a long series of books and documents is immaterial.

In the *Morse* case, as in the instant case, the actual entries were faithful transcriptions of the details of the notes in question; indeed, in the *Morse* case the actual entries were made by innocent clerks. But, so far as the defendant, who caused the entries to be made, was concerned, the entries were "false" within the meaning of the statute because "they stated the existence of transactions which * * * never took place." In the instant case the signature of the comaker or endorser of each note was forged. The entry of the forged name of such comaker or endorser in the books of the bank was false because, so far as the comaker or endorser was concerned, it represented the existence of a transaction which had never occurred.

The District Court sustained the demurrer to the indictment largely upon certain language of this Court in the first *Coffin* case (*Coffin* v. *United States,* 156 U. S. 432, 463). There the Court said that the trial court had erred in a certain instruction with respect to the counts of an indictment charging false entries under Section 5209, R. S., because the instruction gave the impression "that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank." With respect to the erroneous charge the Court, in an express *dictum,* further said (p. 463):

> The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offence which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.

This language, even if not limited by the later decisions of the Court in the second *Coffin* case and in the *Agnew* case, *supra,* lends no support to the trial court's decision in the instant case, since here the transactions involved (i. e., the purported making and endorsing of the notes by "Bessie D. Darby," or "B. D. Darby") did not actually take place, and were not entered as they actually occurred.

The District Court also relied upon *Cooper* v. *United States,* 13 F. (2d) 16 (C. C. A. 4th), and *United States* v. *Young,* 128 Fed. 111 (M. D. Ala.).[6] In the *Cooper* case the defendant, an officer of a bank, endorsed and discounted at the bank an accommodation note made by an insolvent friend at the defendant's request. The defendant thereupon entered the amount of the note to the credit of his account, apparently for the purpose of making his liability to the bank appear less than it really was. Relying on the *dictum* in the first *Coffin* case, above quoted, the court decided that the entry was not a false entry because the transaction entered actually took place and was entered exactly as it occurred. In the *Young* case the indictment charged the defendant, cashier of a bank, with falsely entering in the "cash items" of the bank the amount of a worthless and fraudulent check. In sustaining a demurrer to the indictment the court said that the fraud which entered into the taking of the check by the bank did not obliterate the fact that such check was actually taken

[6] The District Court also cited *Dow* v. *United States,* 82 Fed. 904 (C. C. A. 8th), and *Twining* v. *United States,* 141 Fed. 41 (C. C. A. 3d). We think these cases are clearly inapplicable. The *Dow* case involved an obviously erroneous charge to the jury because it ruled, in effect, "that the reception and crediting to a third party of a check which created an overdraft was the making of a false entry on the books of the bank." In the *Twining* case the decision seems clearly to have been rested upon the ground that there was no evidence that the entries in question were fraudulent or that the defendant had caused them to be made.

by the bank in a transaction with the cashier who truly recited the fact upon the books.

Although arising upon differing facts, we believe that the *Cooper* and *Young* cases are erroneous in principle and inconsistent with the *Coffin, Morse, Hayes, Warn,* and other cases above cited. But even the *Cooper* and *Young* cases do not sustain the decision of the court below. Where, as in the *Cooper* case, a fraudulent entry is made of the note of an insolvent, or where, as in the *Young* case, a fraudulent entry is made of a worthless check, the bank records may be said, in a certain sense, to represent the actual facts, since the bank in fact possesses a note or check signed by the person whose signature appears on the note or check. Where, as in the instant case, an entry is made of a forged signature on a note, the representation in the bank's records is necessarily untrue, and the bank does not possess a note signed by the person whose name appears on the note and in its records.

While, concededly, as pointed out by the court below, it "is not the function of the court to strain the language of a statute unless there is clear justification for so doing" (R. 19), we think that the construction placed upon Section 5209, R. S., by the trial court unduly limits the plain meaning of the language used. In a case involving the construction of that section this Court has said that (*United States* v. *Corbett,* 215 U. S. 233, 242)—

> The rule of strict construction does not require that the narrowest technical meaning

> be given to the words employed in a criminal statute in disregard of their context and in frustration of the obvious legislative intent.

To hold, as the trial court did, that the entries here in question were not false because they faithfully described the instruments as written when they were known to be forged is, indeed, giving to the statute "the narrowest technical meaning." The extraordinary consequences of the results thus produced are apparent. If a bank official enters in the bank records a note which is signed only by A as if it were signed by A and B, the entry is necessarily false. But the court below held, in effect, that if the official first forges the name of B to the note and then transcribes the details of the note into the bank records, the entry is not false. Mere statement discloses the error in the court's construction.

The purpose of Section 5209, R. S., was to enable the Comptroller of the Currency to ascertain from time to time the true condition of a bank, not only for the purpose of detecting offenses but for the purpose of keeping the bank in line with the requirements of the statutes and correcting improper practices. *United States* v. *Corbett,* 215 U. S. 233, 241–242; *Billingsley* v. *United States,* 178 Fed. 653, 659 (C. C. A. 8th), *supra; Morse* v. *United States,* 174 Fed. 539, 547 (C. C. A. 2d), *supra; United States* v. *Wilson,* 176 Fed. 806, 808 (C. C., S. D. Fla.), *supra.* We think that the decision of the

court below not only does violence to the language of the statute but fails to give effect to its obvious purpose.

CONCLUSION

The order of the District Court sustaining appellee's demurrer to and quashing the indictment should be reversed.

Respectfully submitted.

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MARCH, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933

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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 653

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

JOHN G. DARBY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 653

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

JOHN G. DARBY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

STATEMENT IN OPPOSITION TO JURISDICTION.

I.

The right to proceed by direct appeal to the Supreme Court of the United States only lies where the *validity* or *construction* of the pertinent statute is involved. No such question here arises, since the de-

murrer raised solely the question of the sufficiency of the indictment to charge a crime under the statute.

United States v. *Denison*, 60 App. D. C. 71, 74;
United States v. *Stevenson*, 215 U. S. 190;
United States v. *Carter*, 231 U. S. 492 (involving charges of violating identical statute as in this case);
See opinion of District Judge in this case sustaining demurrer, *infra*.

II.

The identical statute in this case as it particularly concerns the crime of making "false entries" has been repeatedly both construed and upheld:

Cross v. *U. S.*, 132 U. S. 313;
Allis v. *U. S.*, 155 U. S. 116;
Coffin v. *U. S.*, 156 U. S. 433;
Cochran v. *U. S.*, 157 U. S. 285;
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Cooper v. *U. S.*, 13 Fed. (2d) 16.

Where, then, the construction of a statute and its validity have been repeatedly adjudicated, the right to proceed by direct appeal from a district court on either of these grounds will no longer be recognized:

U. S. v. *Denison*, 60 App. D. C. 71, 74.

III.

The assignment of errors shows that this appeal is based on supposed errors of the District Court in construing the indictment.

This Court has repeatedly held that, on appeal or error, the construction of the District Court on the sufficiency of an indictment is binding and conclusive, and must and will be accepted by the Supreme Court:

U. S. v. *Miller*, 223 U. S. 599;
U. S. v. *Patten*, 226 U. S. 525;
U. S. v. *Winslow*, 227 U. S. 202;
U. S. v. *Yuginovich*, 256 U. S. 450;
U. S. v. *Colgate & Co.*, 250 U. S. 300.

The District Court's opinion is as follows:

> "Defendant's demurrer to the indictment is sustained on the authority of *Coffin* v. *United States*, 156 U. S. 432, and *Cooper* v. *United States*, 13 F. (2d) 16, the latter a Circuit Court of Appeals decision for this Circuit. The principle laid down in these cases is believed to be directly applicable to the *facts* in the present case. While what defendant is alleged in the indictment to have done would clearly appear to amount to misapplication of funds, he is not charged with this under the statute (12 U. S. C. A. 592), but solely with the making of a false entry, which is a concrete offense and not committed where, as here, the transaction entered, actually occurred and was entered exactly as it occurred."

On the very assignment of errors, therefore, it is plain that this Court has no jurisdiction of this appeal.

IV.

The Supreme Court of the United States held, in *Coffin* v. *U. S.*, 156 U. S. 433, construing the very statute here involved:

> "We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred."

The District Court, construing the indictment, said that the transaction on which it was based

> "actually occurred and was entered exactly as it occurred."

If the Supreme Court, under its own decisions, *supra*, Par. III, cannot review the construction of the indictment, but is bound by it, then there is no substantial question left to be determined on this appeal, as the lower court, in its opinion, adopted the language of the Supreme Court construing the statute (*Coffin* case), and said:

> "The making of a false entry is a concrete offense and not committed where, as here, the transaction entered, actually occurred and was entered exactly as it occurred."

Respectfully submitted,

LUCIEN H. MERCIER,
Attorney for Appellee.

Service accepted this 12th day of January, A. D. 1933.

SIMON E. SOBELOFF,
Attorney for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 653

THE UNITED STATES OF AMERICA, APPELLANT,

v.

JOHN G. DARBY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

MOTION TO DISMISS OR AFFIRM

Comes now the appellee, JOHN G. DARBY, and moves this Honorable Court to dismiss the appeal or affirm the judgment of the District Court in this cause; and, for reasons therefor says:

1. The right of direct appeal exists only where the construction or validity of a Federal statute is involved.

a. The Assignment of Errors show this appeal to be based on the supposed error of the

lower court in construing an indictment, and holding it insufficient in law, and not on error in construing a statute.

1. On an appeal, the ruling of the lower court on the sufficiency of an indictment cannot be disturbed, but must be adopted by the Supreme Court.

b. The construction of the Statute was not involved below, but merely the construction of the indictment.

2. The right of direct appeal no longer exists where, as in this case, the statute involved has been repeatedly construed and upheld.

3. In support of this motion appellee relies on its statement in opposition to jurisdiction filed herein, and the authorities therein cited.

LUCIEN H. MERCIER,
Attorney for Appellee.

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 653.

UNITED STATES OF AMERICA, *Appellant*,

vs.

JOHN G. DARBY, *Appellee*.

On Appeal from the District Court of the United States for the District of Maryland.

APPELLEE'S BRIEF.

LUCIEN H. MERCIER,
Counsel for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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On Appeal from the District Court of the United States for the District of Maryland.

JURISDICTION.

MOTION TO DISMISS OR AFFIRM.

Appellee insists on his Motion to Dismiss or affirm. The Motion was based on the ground, *inter alia*, that what was involved below was the sufficiency of the indictment, and the interpretation of decided cases, and not the construction of the statute. That these were the questions there can be no doubt, as, in his opinion, the District Judge says—

> "The single question before the Court is whether the following allegations as set forth in the indictment * * * are sufficient to meet the requirements of the statute defining the crime of false entry * * *.

> "Defendant * * * is * * * charged * * * solely with the making of false entries which is a separate, concrete offense, and, *if we properly interpret the aforegoing decisions*, is not committed where, as here, the transactions of which he made entries actually occurred and were entered exactly as they occurred."

Does this not answer the Government's affirmance that decision below was concerned with the construction of the Statute? All the District Judge was concerned with was whether the allegations of the indictment were sufficient to make up the crime as these former decisions defined it, not as he thought the statute made it.

Having tested the sufficiency of the indictment, and having found it lacking, this finding cannot be reviewed or disturbed by this Court,

U. S. v. Colgate & Co., 250 U. S. 300;
U. S. v. Yuginovich, 256 U. S. 450;
U. S. v. Winslow, 227 U. S. 202;
U. S. v. Patten, 226 U. S. 525;
U. S. v. Miller, 223 U. S. 599;

leaving no substantial question to be passed on on this appeal.

THE INDICTMENT.

The indictment recites the possession by the bank of certain notes received and accepted by the bank in regular discount transactions; the entry of the transactions in the discount register exactly as they occurred; but charges that these entries, which consisted of a recital of the names appearing on the notes, were false and fraudulent in that the name of one of the makers on said notes was forged, as the defendant well knew.

THE QUESTION.

The question which the Government seeks to present by this appeal is more correctly stated—

> Whether a bank official is guilty of making a false entry when he faithfully enters on the books of a bank exactly as it occurred a note discount transaction made in the regular course of business; knowing when such entry is made that one of the signatures to the note is forged.

ARGUMENT.

Singularly enough, the Government and the appellee both rely on the same decided cases; but both analyze them to reach a different result. The case resolves itself, however, into the question as to what, exactly, is a book entry; and the answer to that question by this Court will determine the soundness, or otherwise, of the base on which the Government rests its case.

The Government's entire argument proceeds on the premise that book of accounts, and the entries therein, are *certifications* and *warranties* of the value and genuineness of the paper which forms the basis of the entries. (Govt.'s brief, pp. 6, 7, 11, 12, etc.) If such is the function of book entries, then there may be some merit to the argument; but not one case can be found, nor a single text book which could or would or does give that kind of an effect to books of accounts or entries therein.

I.

What Are Book Entries.

Books of accounts and book entries are kept and made merely to record transactions occurring during the regular course of business, in order that anyone interested might learn the type of transactions entered into; the number of them; the date of any paper taken, and the names appearing thereon; the time of the paper, etc., etc. Such

books guaranty nothing whatever excepting that on a certain day such and such a transaction took place. (U. S. v. Young, 128 Fed. 114; Billingsley v. U. S., 178 Fed. 653, 663.) Such books are kept merely to record transactions, and not to *represent* whether a certain note or check, the basis of the transaction, is good, bad or forged. These representations as to value and genuineness of signatures are made when the note is discounted. By presenting the note for discount, the person who negotiates it then and there represents and warrants to the bank, *by force of law,* that (1) the signatures and instrument are genuine; and that (2) the party negotiating it has no knowledge of any fact which would impair its validity (Negotiable Instruments Act).

But there is and can be no such warranty or representation in making an entry in the books of the bank showing that the bank paid out its money to discount that particular note. The entry asserts nothing whatever excepting that the transaction took place.

It requires no great argument to demonstrate this—for instance, in 9 C. J. 138, the term "Bookkeeping" is defined to be

> "The art of *recording,* in a systematic manner the *transactions* of merchants, traders and other persons engaged in pursuits connected with money."

And, to the same effect are Bouvier's, and Black's Law Dictionaries, and other dictionaries.

Again, considering the matter from the standpoint of evidence, book entries are received in evidence only as proof that there was or was not such a transaction as claimed, such an item or debit or credit; but cannot be received in evidence to show matters outside of that, such as the purpose of the transaction, the delivery of goods, or any other collateral matter (22 C. J. 877). The reason being that the entry merely asserts that the transaction

took place, and not its validity, or the lack of fraud. Such book entries are *prima facie* evidence and are assertions that the transactions recorded therein actually took place, and nothing more. (22 C. J. 971.)

Again, a witness in testifying may refresh his recollection as to whether a transaction took place, and the time, etc., by the entries in his book. (40 CYC 2454); but his testimony does not by that fact prove or disprove the fraud that may have entered into the transaction. His testimony goes only to prove from the books that the transaction took place.

In the opinion of appellee, all of the decided cases on the subject, which includes those cited by the Government in its brief, clearly recognize the function of books of accounts, and book entries.

Thus, the District Judge in the instant case says:

> "The records of the bank are not intended to furnish the history or the origin of the paper actually passing through the bank, whether received in good or bad faith, whether valuable or worthless for any reason." (R. 19)

In *U. S. v. Young*, 128 Fed. 114, the Court said, speaking of the purpose of the Statute involved herein:

> "Another dominant purpose was, by enforcing true entries, to spread upon the books of the bank accurate statements of things done by the bank officers, to the end that bank examiners might be better enabled thereby to trace and determine accurately, day by day, the actual condition and conduct of the business of the bank. * * * The cashier's books are not intended to furnish, and are not kept to show, the history or the origin of paper taken by the cashier, whether received in good or bad faith, or 'worthless and fraudulent'. * * *
>
> "The cashier, by including the item here in his 'cash items' did not declare or represent that the check upon

> which the item was based was good or supported by honest consideration. The entry makes no representation whatever as to that. The legal effect of the entry is but a written representation to whom it may concern that the cashier, in an actual transaction, had received the check, and that the amount stated was the basis. * * * The truth of what the cashier actually did with the bank's cash as to this check, and statement he made about the cash in the entry on the books of the bank, is not altered in any way by the fact that he knew the check was 'worthless and fraudulent'." * * *

Again, in *Coffin v. U. S.*, 156 U. S. 433, this Court said:

> "that an entry would be false, though it faithfully *described* an actual occurrence, unless the transaction which it *represented*," etc. (Italics supplied)

Again, in the later *Coffin* case (162 U. S. 661) the Court said:

> "An entry * * * which *represents* as an actual transaction one which does not and did not exist," etc. (Italics supplied)

Again, in *Morse v. U. S.* (174 Fed. 539), the Circuit Court of Appeals said:

> "The entries in question were false because they stated the existence of transactions which the jury found never took place."

The proposition seems so clear as to make it appear an imposition on this Court to cite any further authorities.

II.

Entering an Actual Transaction Exactly as it Occurred Cannot Be a False Entry.

In the opinion of appellee, all of the decided cases clearly and unequivocally support the above statement of the law;

which includes all of the cases cited and relied upon by the Government in its brief. It is only by snatching a sentence here and there out of an opinion, that these cases can be analyzed in any other way.

A.

THE GOVERNMENT'S SUMMARY.

The summary, page 5, of the brief typifies the entire argument and brings out clearly the error into which the government has allowed itself to be led. The argument is based on the assumption that books of entry, and entries therein certify as to the genuineness of paper. Naturally, the signature of a co-maker of a note is a material part of the note; but, if books of account are kept to record transactions; or to list the notes on hand; how else could the transaction under which the bank's cash was paid out be faithfully and accurately recorded excepting by listing the note exactly as it was discounted. The note was still in the bank, and remained there as part of its assets. The book entry could neither take away from or add to the exact tenor of the note, otherwise the entry would be bound to be false. The entries must correctly represent the transaction, and if it is an itemized entry, as it was in this case, correctly represent the face, date, amount, name of makers, etc., of the note taken in the transaction.

B.

THE ANALOGOUS CASES.

There is no decided case having the exact situation presented by this case; but there are three decided cases where the factual situation was almost identical to that here present.

In the case of *Dow v. U. S.*, 82 Fed. 904, 910, Dow, the president of a defunct national bank was convicted under an indictment charging false entries under Sec. 5209 of the

Revised Statutes. The proof consisted in showing that although he knew that certain checks drawn on and deposited in his bank were worthless because the drawer had not sufficient funds to meet them, he nevertheless caused entries to be made showing the deposits of that day to be the amount actually received plus the worthless checks. The Court charged the jury that:

> "It was his duty to know whether the checks were good or not. So that if you believe from the evidence that he accepted as any part of this amount the false and fictitious checks, and gave credit upon them in this entry upon his books, I say to you that that entry is false and fictitious within the meaning of the law."

Reversing the lower Court, the Circuit Court of Appeals for the Eighth Circuit said:

> "In effect, it was ruled that the reception and crediting to a third party of a check which created an overdraft was the making of a false entry on the books of the bank. * * * Certainly, if an overdraft is made and allowed under circumstances justifying it, it cannot be said that the entry on the books of the bank of the checks constituting the overdraft is a false entry; and, on the other hand, if an overdraft is in fact made and allowed under circumstances which make the transaction a fraud upon the bank, the entry of the transaction just as it occurred is not a false entry. * * * Coffin v. U. S., 156 U. S. 432."

In the case of *U. S. v. Young*, 128 Fed. 114 (D. C.) (approved by the New York Cir. Ct. in *U. S. v. Morse*, 161 Fed. 429, 436; and by the Fourth Circuit, in *Cooper v. U. S.*, 13 Fed. 2nd 16), which is almost the identical case with the instant one, the bank cashier was indicted for false entries, the allegations being that the cashier, who happened to be city treasurer had made an entry in his cash items for a particular day of a check drawn on another bank by himself as city treasurer, and deposited by him

in the bank of which he was cashier; the charge being that when he made said entry, the cashier well knew that the check was worthless, valueless and fraudulent.

In a well reasoned, and most logical opinion, the Court sustained a demurrer to the indictment. The opinion in this case goes into the history and aims of this legislation; and then says:

> "The sole purpose of this provision (false entry) is fully accomplished if the item included in the 'cash items' is truthfully based on any actual transaction with the cashier, which increases or diminishes the cash in his hands. The demand of this provision is that when a check, though 'worthless and fraudulent,' whether knowingly received or not, is received by the cashier, that the amount paid out on account of it, the particular—the detail—on which the item in his cash account is based, shall be truly stated. Obedience to that command, truly making the entry, though the history of the check and the cashier's dealing with it may bring him under the condemnation of other provision, cannot make him a transgressor against this provision.
>
> "If we stop a moment to consider what the 'item' is which must enter into the cash statement, it will be seen at once that the good or bad faith in which the paper is taken, or its value or worthlessness, cannot determine whether the entry of the 'item' as to it, or its inclusion under the aggregate of 'cash items,' is true or false, in the sense of this provision of the statute. One of the meanings of item is, 'an article; single entry; anything which can form part of a detail; the particulars of an account.' The detail, or particular here—the 'item'—is on what account the sum stated has been paid out. This check is the thing which forms part of the detail—the 'item'—which shows what was done with the bank's money as to it. The inclusion in the cash of a perfectly good check drawn on the bank, if that check has not in fact entered into any transaction of the cashier upon which he parted with money of the bank, would constitute a 'false entry,' if included in the 'cash items' with intent to deceive. On the other

hand, knowingly entering or including in the 'cash items' an item based on a 'valueless and fraudulent' check, if it were in fact received in a transaction with the cashier at the time the entry is made, and he paid out the amount of money included in the 'item' on account of it, and truly entered or included the item in his 'cash item,' could not constitute a false entry. It is immaterial here, therefore, whether or not the check was in fact 'worthless and fraudulent.'

* * * * * * * * * *

"The several counts assail the truth of the entry solely on the ground that the amount of one of the items which entered into the aggregate 'cash items' was based on a check or paper which was fraudulent and worthless, and known to be so at the time of the entry. The cashier in that event would be equally bound, as in the case of a good check bona fide received, in stating his transactions upon the books, to make a proper 'cash item' as to such check, irrespective of its being taken in good faith, or knowingly received in bad faith. The several counts do not deny that the truth had been stated in the entry, or that the check upon which the item was based had been received by the cashier in an actual transaction with the bank. The several counts, therefore, resolve themselves into an assertion that the recital truthfully made by the cashier of the fact that he has included in his 'cash items' an item based on a check received by him in an actual transaction with the bank, is converted into a false entry because he knew at the time the entry was made that the check was 'worthless and fraudulent,' etc. The fraud which entered into the consideration or taking of the check by the bank cannot obliterate or recall the fact that such a check was actually taken by the bank in a transaction with the cashier, who truly recited the fact upon the books. It cannot be a false entry to enter upon the books of the bank a correct recital as to the taking of the check and its inclusion as an item in the aggregate 'cash items' of the bank. The truth of what the cashier actually did with the bank's cash as to this check, and statement he made about the cash in the entry on the books of the bank, is not altered in any way by the fact that he knew the

> check was 'worthless and fraudulent.' The entry, as we have seen, involved no assertion as to the value or bona fides of the check. It stated the exact truth of the transaction as it is entered on the cash account. It cannot be a false entry to make a recital on the books of the bank which speaks the truth. Coffin v. U. S., 156 U. S. 446; Id., 162 U. S. 682; Graves v. U. S., 165 U. S. 324. The averments here are quite different from those in the indictment in United States v Britton, 107 U. S. 657. There it was specifically alleged that the item entered, representing cash, etc., 'was not then and there received by said association upon any account, from any source,' as he well knew."

In *Cooper v. U. S.*, 13 Fed. 2nd 16, Circuit Court of Appeals for the Fourth Circuit (1926), the defendants were convicted of misapplying funds and of making false entries in the books of a national bank. Reversing the conviction, the Court said, as to the false entry charge:

> "The false entries charged to have been made in counts 2 and 3 were exact entries of what in fact occurred; that is to say, that on April 27th a note of Sanderson in the amount of $13,500 was discounted on the security or indorsement of Thomas E. Cooper, and the proceeds thereof deposited to the account of Cooper. The trial court was of opinion that this was a violation of the statute, and in effect told the jury that, if Thomas E. Cooper caused the Sanderson note to be discounted and knew the facts to be as William B. Cooper had stated them in his letter of April 1st—that is to say, that it was an accommodation note made by an insolvent—the entry of such a note on the books of the bank as a debt due by the maker and the crediting of the proceeds to Thomas E. Cooper constituted a false entry as charged in the two counts. And the court further charged that, if the purpose in putting the notes in the bank was to make it appear that the direct liability of Thomas E. Cooper was less than it was in fact, this was sufficient to show an intent to deceive the examiner and other officers mentioned in the statute.

"We are constrained to believe, as was said by the Supreme Court in Coffin v. U. S., 156 U. S. 432-463, that:

> 'The language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted a false entry; in other words, that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.'

"See, also, Twining v. U. S., 141 Fed. 41; United States v. Young, 128 F. 111; Dow v. U. S., 82 F. 910; Hayes v. U. S., 169 F. 101.

"Inasmuch as admittedly, the entries made truthfully represented the facts as they actually took place, it follows that the charge of the court in the respects mentioned was error, for which a new trial must be granted."

C.

THE GOVERNMENT'S ANALYSIS OF THE DECIDED CASES IS INCORRECT.

In its brief, the Government admits the existence of the case law as claimed by appellee; but endeavors, by a labored argument, to make distinctions based principally on the *Agnew*, second, *Coffin*, *Warn* and *Morse* cases *infra*. What the Government overlooks, however, is that those cases are clearly entirely different than the instant one. In all those cases, and a host of others, including the

cases other than the above cited by the Government, the defendants *manufactured* paper for the very purpose of sustaining false entries. In these cases, the paper never entered into any actual transaction of the bank, but was merely made up and placed with other papers of the bank to sustain entries showing the occurrence of transactions which never took place, and never existed, or to hide transactions which did exist.

In the instant case, the note containing the alleged forged name of the co-maker was discounted by the bank, and the bank paid money for the note. This was an actual transaction entered into in the regular course of business. The indictment charges the entry of this actual transaction exactly as it took place That a signature to the note was forged cannot take away from or add to the fact that the note was taken in for discount; and an entry being required to record this transaction, the entry of it exactly as it took place cannot by any stretch of the law or imagination constitute a false entry.

In the *Agnew v. U. S.*, case, *supra* (165 U. S. 36), the defendant manufactured a deposit slip showing a credit to his personal account which never existed. This being the fact, it is easy to understand what the Court meant when it approved the charge of the lower court which said, what the government italicizes (brief p. 7)

> "The crime of making false entries * * * includes any entry on the books of the bank which is *intentionally made to represent what is not true or does not exist* * * *.
>
> "*If the statement made upon the deposit slip is false, the entry of it* in the bank *and the books of the bank is false.*" (Italics, the government's.)

The above charge was clearly correct in principle and under the facts of that case. The lower court therein pointed out that the entry of the deposity slip "in the bank" (the words above which appellee has not italicized to more thor-

oughly emphasize them), and in the books of the bank was false.

But it cannot follow that if the entry of a false slip made but to support a transaction which never took place, is false, the entry in a bank's discount register of a note actually discounted, exactly as its tenor imports, is a false entry. The two things do not and cannot logically follow one another, as the government endeavors to have them do.

It is true, as the government contends (brief, p. 10) that the entry of a *sham* or *fictitious* transaction is a false entry; and all of the cases cited to support this statement of the law, do support it. As was pointed out, however, these cases deal with situations, and the very statement of the principle as above so indicates, where paper is forged or manufactured merely to support false entries.

The second *Coffin* case, *supra*, (162 U. S. 664) cannot be used as a basis of argument as the Government does, without giving the full pertinent extracts of this Court's decision. Let us review this entire case. It first came up in 156 U. S. 433—and there this Court laid down the rule as to what was meant by false entries by the Statute, by the following language:

> "Whilst we consider the charges asked were in some respects unsound, yet the exception reserved to the charge actually given by the court was well taken, because therein the questions of misapplication and of false entries are interblended in such a way that it is difficult to understand exactly what was intended. We think the language used must have tended to confuse the jury and leave upon their minds the impression that *if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly* as it occurred constituted a 'false entry'; in other words, that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. The thought thus conveyed implied that the truthful entry of a fraudulent transac-

tion constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred."

This case was retried in the lower Court, and again came on for review by this Court (162 U. S. 661). The charge of the lower court taken from the bill of exceptions was:

> "'An entry knowingly and purposely made on the books of the bank, with intent to deceive or defraud, as charged, which represents as an actual transaction one which does not and did not exist, or an entry knowingly and purposely made, with intent to deceive and defraud, as charged, which in a material part falsely and untruly represents an actual and existing transaction, would constitute a false entry within the meaning of the statute. If, however, the entry truly represents an actual bona fide transaction, then it would not constitute a false entry. But if the paper was never accepted or discounted by him for the bank, but was simply left with the bank as a mere memorandum and not as a deposit and for the fraudulent purpose of enabling fictitious entries to be made on the books of the bank with the intent to deceive or defraud as charged, such entry on the books of the bank would constitute a false entry.'

"The objection to this portion of the charge is that it assumes that an entry is false unless it represents a transaction entered into in good faith and without fraud. It is contended that this instruction is within the condemnation of this court as expressed in its former opinion (156 U. S. 463). * * * The objection is not meritorious. *The trial court carefully distinguished between an entry based upon an actual discount* of paper and credit predicated therein, and a credit not representing an actual deposit or discount. The expression 'bona fide' was used in the sense of 'real', and but emphasized the word 'actual'. * * *

> "* * * The fact that other notes were substituted for this paper does not necessarily import that the original transaction was an actual one if the *notes were originally given to the bank as a mere pretext to enable the false entry to be made*, and the subsequent renewals were equally unreal and made for a like purpose. * * * Prior to the statement in the bill of exceptions, which we have quoted, the following recital appears: 'It was claimed on behalf of the government, and evidence was by it introduced tending to show, that * * * said paper was not actually discounted by said bank or actually received as a genuine deposit, but was only received as a memorandum deposit to serve for the time being only, for the purpose of giving the Indianapolis Cabinet Company an apparent credit upon the books of the bank, which in fact it did not have, and that said entries represented no actual transactions whatever.' *We think this extract clearly indicates that the charge as given was relevant to the issue.*"

From this case, the Government feels it can make the following argument (brief, p. 11):

> "In the instant case, the transcription into the bank's discount register of the forged name of the comaker or endorser of the particular note in question clearly represented as an actual transaction one which did not exist. Moreover, it appears that each of the notes was actually signed by the appellee and discounted by the bank. Accordingly, the transcription into the register of the forged signature of the comaker or endorser falsely represents an actual transaction between the appellee and the bank."

It is inconceivable to appellee how the above case can support such an argument; but, the fact is that this is the reiterated argument of the Government throughout its brief. The argument is false in its own statement. If, as it is said in the second sentence, the notes were actually discounted by the bank, how can that be reconciled with the statement of the first sentence that the entry "clearly represented as

an actual transaction one which did not exist." And, again, if the bank actually discounted a paper to which one signature was forged, how can it be said, as it is in the closing sentence, that the entry of the transaction "falsely represented an actual transaction."

The *Morse v. U. S.* case, *supra* (174 Fed. 539), also cannot under any possible hypothesis be claimed to support such an argument. The entries in that case were decidedly not those in the instant case. Appellee relies on the quotations from that case as they appear on pages 12 and 13, Government's brief, in support of his own contentions.

The indictment in this case does not allege that the note was forged merely to support an entry (*Cross v. No. Carolina,* 132 U. S. 131); but states that the notes were actually discounted by the bank in regular course of business; and the transaction was entered exactly as it occurred. In said *Cross* case, *supra,* bank officers had been indicted by the State of North Carolina for forging notes, which said notes were forged in order to sustain certain false entries in the books of the bank, a national bank. A plea in abatement was filed, to the effect that inasmuch as the Federal Statutes Sec. 5209, made it a federal offense to make false entries in the books of a national bank, the state had no right to prosecute the officers for the forgery. The Supreme Court affirmed the state court in overruling this contention; but this case is interesting in its statement as to what the Supreme Court felt was necessary in order that a forged note be made the basis of a charge of making false entries. The Court said:

> "If the punishment by the State of the crime of forgery of which the defendants were found guilty, leaves them exposed to punishment by the United States for having made false entries upon the books of the bank of which they were officers, with the intent to deceive the agent appointed by the general government to examine its affairs, it results from the fact that they are amenable to the laws of the United States,

> as well as of the State of North Carolina, and may be subjected to punishment for violating the laws of each government. *The forgery may have been committed in order that the instrument might thereafter become the basis of false entries upon the books of the bank. But that circumstance* cannot defeat the authority of the State."

In the case of *U. S. v. Warn,* 295 Fed. 328, the defendant entered in the books of the bank a forged "dummy" note, which never entered into any transaction of the bank, and on which no loan was ever made, in order to conceal a real transaction by which an excess loan was made to another patron of the bank. Appellee finds no criticism of the quotation from this case as contained in the Government's brief, excepting that it does not go far enough, for, after the language quoted, comes an explanation of what the Court meant, as follows:

> "Here the gist of the charge is that the note, entered as alleged, was a mere dummy, etc., and the whole question of the sufficiency of the charge turns upon the meaning to be attached to the word 'dummy' * * * If, as I take the term 'dummy' here to mean, the Streeter note was a mere sham, a mere make-believe note, and the defendant knew such to be its character, he could not rightfully carry it as a real asset of the bank, and entries purporting to exhibit it as such would be false."

The facts in the *Coffin v. U. S.* case, 162 U. S. 664, are also not quite as the Government states them. In that case, a note had been left with the bank as a mere memorandum; but it was entered on the books as an item of discount.

D.

THE PURPOSE OF THE STATUTE.

The best analysis of the purpose of this statute is contained in the case of *U. S. v. Young, supra* (128 Fed. 114); and it was there said that the first part of the statute having

provided for embezzlement, abstraction and wilful misapplication of the moneys of national banks, and having thereby enacted safeguards for the protection of the banks' funds, no legitimate construction of the Statute could say that Congress by providing against false entries intended to go over the same ground; and further that while under a certain transaction an officer might be guilty of misapplication, nevertheless if the transaction actually occurred and was entered exactly as it occurred, it could not constitute a false entry to correctly record it.

CONCLUSION.

Appellant submits that on the authority of all of the cases cited by the Government, and especially of the analogous *Young* and *Cooper* cases; and on the argument that the entries in the books of a bank are merely for the purpose of showing the actual transactions of a bank, and not in any sense representations, guarantees, or warranties that the paper which the bank discounted is genuine and not forged, worthless or spurious, the excellent opinion, and the ultimate decision of the lower court sustaining the demurrer were correct.

Respectfully,

LUCIEN H. MERCIER,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

No. 653.—October Term, 1932.

The United States of America, Appellant, *vs.* John G. Darby, Appellee.	On appeal from the District Court of the United States for the District of Maryland.

[April 10, 1933.]

Mr. Justice Cardozo delivered the opinion of the Court.

The case involves the construction of a statute of the United States which makes it a crime for an officer or employee of a Federal reserve bank, or of any member bank, to make any entry in its books with intent to defraud. R. S. sec. 5209 as amended by the Act of September 26, 1918, c. 177, sec. 7; 40 Stat. 972; 12 U. S. Code, sec. 592.*

An indictment in sixteen counts charges the appellee, John G. Darby, with a violation of this statute. Eight entries are alleged to have been falsely made. Each has relation to a separate promissory note discounted by the Montgomery County National Bank of Rockville, Maryland. The notes bore the genuine signature of J. G. Darby as maker. They bore what appeared to be the signature of Bessie D. Darby as co-maker or endorser. In fact, as the appellee well knew, her signature was a forgery. With this knowledge he entered in the discount book the name of Bessie D. Darby

*Sec. 5209. Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank . . . who . . . makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; . . . shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

as co-maker or endorser, and did this in the course of his employment as assistant cashier. The odd numbered counts charge an intent to injure and defraud the bank, and the even numbered counts an intent to deceive the officers of the bank and the Comptroller of the Currency. A demurrer to the indictment was sustained by the District Court on the ground that the discount of the paper had been recorded as it occurred, and hence that the entries were not false within the meaning of the statute. The case is here under the Criminal Appeals Act (Act of March 2, 1907, c. 2564, 34 Stat. 1246; 18 U. S. Code, sec. 682; cf. Judicial Code, sec. 238; 28 U. S. Code, sec. 345) upon an appeal by the Government.

"The crime of making false entries by an officer of a national bank with the intent to defraud . . . includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or to defraud the association." *Agnew* v. *United States,* 165 U. S. 36, 52. The act charged to the appellee is criminal if subjected to that test. At the time of the entry, no note was in existence with the signature of Bessie D. Darby as co-maker or endorser. No note with such a signature had been discounted by the bank. The forged signature was a nullity, as much so as if the name had been blotted out before the discount, or never placed upon the notes at all. Verity was not imparted to the entry by the simulacrum of a signature known to be spurious. *Agnew* v. *United States, supra; Coffin* v. *United States,* 162 U. S. 664, 683; *United States* v. *Morse,* 161 Fed. 429, 436; *Morse* v. *United States,* 174 Fed. 539, 552; *United States* v. *Warn,* 295 Fed. 328, 330; *Billingsley* v. *United States,* 178 Fed. 653, 659, 662; *Peters* v. *United States,* 94 Fed. 127, 144. As well might it be said that dollars known to be counterfeit might have been entered in the books as cash.

To read the statute otherwise is to be forgetful of its aim. Its aim was to give assurance that upon an inspection of a bank, public officers and others would discover in its books of account a picture of its true condition. *United States* v. *Corbett,* 215 U. S. 233, 241, 242; *Billingsley* v. *United States, supra.* One will not find the picture here. Upon the face of the books there was a statement to examiners that paper with two signatures had been dis-

counted by the bank and was then in its possession. In truth, to the knowledge of the maker of the entries, there were not two signatures, but one.

Nothing at war with our conclusion was said, much less decided, in *Coffin* v. *United States,* 156 U. S. 432, 462. The opinion in that case is to be read in the light of a later opinion in the same case (162 U. S. 664), and of the still later opinion in *Agnew* v. *United States, supra.* Whether the conclusion would be the same if the signature had been genuine, but the signer had been known to be an insolvent, or a man of straw (cf. *Cooper* v. *United States,* 13 F. (2d) 16; *Morse* v. *United States, supra; United States* v. *Warn, supra, Billingsley* v. *United States, supra*), there is no occasion to determine. Our decision does not go beyond the limits of the case before us.

The judgment should be reversed and the case remanded to the District Court for further proceedings in accordance with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.